

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

PICTURE PATENTS, LLC, )  
)  
Plaintiff, )  
)  
v. )  
)  
)  
AEROPOSTALE, INC., DICK'S )  
SPORTING GOODS, INC., CHARLOTTE )  
RUSSE, INC., GSI COMMERCE )  
SOLUTIONS, INC., FOGDOG, INC., )  
GSI COMMERCE, INC., NATIONAL )  
BASKETBALL ASSOCIATION, NBA )  
PROPERTIES, INC., NBA MEDIA )  
VENTURES, LLC, MAJOR LEAGUE )  
BASEBALL PROPERTIES, INC., MLB )  
ADVANCED MEDIA, L.P., LINENS 'N )  
THINGS, INC., TWEETER NEWCO, LLC, )  
TWEETER OPCO, LLC, BUY.COM, INC. )  
)  
Defendants. )

Civil Case No. 07-cv-5567 (JGK) (HBP)  
THIRD AMENDED COMPLAINT  
JURY TRIAL DEMANDS  
U.S.D.C. S.D. N.Y.  
CASHIER'S

**THIRD AMENDED COMPLAINT**

Plaintiff Picture Patents, LLC (hereinafter referred to as "Picture Patents"), by and through undersigned counsel, hereby brings this Third Amended Complaint against Defendants Aeropostale, Inc. (hereinafter referred to as "Aeropostale"), Dick's Sporting Goods, Inc. (hereinafter referred to as "Dick's Sporting Goods"), Charlotte Russe, Inc. (hereinafter referred to as "Charlotte Russe"), GSI Commerce Solutions, Inc. and GSI Commerce, Inc. (hereinafter referred to collectively as "GSI"), Fogdog, Inc. (hereinafter referred to as "Fogdog"), National Basketball Association, NBA Properties, Inc. and NBA Media Ventures, LLC (hereinafter referred to collectively as "NBA"), Major League Baseball Properties, Inc. and MLB Advanced Media, L.P. (hereinafter referred to collectively as "MLB"), Linens 'n Things, Inc. (hereinafter

referred to as "Linens 'n Things"), Tweeter Newco, LLC and Tweeter Opco, LLC (hereinafter referred to collectively as "Tweeter") and Buy.com, Inc. (hereinafter referred to as "Buy.com"), (hereinafter referred to collectively as "Defendants"), and alleges as follows:

**THE PARTIES, JURISDICTION AND VENUE**

1. Plaintiff Picture Patents, LLC is a limited liability company organized and existing under the laws of the State of Delaware, having a principal place of business at 325 Riverside Drive, New York, NY 10025. Picture Patents, LLC is a registered foreign limited liability company in the State of New York and is doing business in this State and District.

2. Upon information and belief, Aeropostale, Inc. is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business located at 112 West, 34th Street, 22nd Floor, New York, NY 10120. Upon information and belief, Aeropostale is also a registered foreign corporation in the State of New York. Aeropostale has been and is doing business in the State of New York and within this District, with a regular and established place of business located at 112 West, 34th Street, 22nd Floor, New York, NY 10120.

3. Upon information and belief, Dick's Sporting Goods, Inc. is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business located at 300 Industry Drive, Ride Park West, Pittsburgh, PA 15275. Upon information and belief, Dick's Sporting Goods is also a registered foreign corporation in the State of New York and Dick's Sporting Goods has been and is doing business in the State of New York and within this District.

4. Upon information and belief, Charlotte Russe, Inc. is a corporation organized and existing under the laws of the State of Ohio, having a principal place of business located at 4645

Morena Blvd., San Diego, CA 92117. Upon information and belief, Charlotte Russe has been and is doing business in the State of New York and within this District.

5. Upon information and belief, GSI Commerce Solutions, Inc. is a corporation organized and existing under the laws of the State of Pennsylvania, having a principal place of business located at 935 First Avenue, King of Prussia, PA 19406. Upon information and belief, GSI Commerce Solutions, Inc. has been and is doing business in the State of New York and within this District.

6. Upon information and belief, GSI Commerce, Inc. is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business located at 935 First Avenue, King of Prussia, PA 19406. Upon information and belief, GSI Commerce, Inc. has been and is doing business in the State of New York and within this District.

7. Upon information and belief, Fogdog, Inc. is a corporation organized and existing under the law of the State of Delaware, having a principal place of business located at 500 Broadway, Redwood City, CA 94063. Upon information and belief, Fogdog has been and is doing business in the State of New York and within this District.

8. Upon information and belief, National Basketball Association is a not-for profit corporation organized and existing under the laws of the State of New York, having a principal place of business located at Olympic Tower, 645 5<sup>th</sup> Avenue, New York, NY 10022. Upon information and belief, NBA Properties, Inc. is a corporation having a principal place of business located at Olympic Tower, 645 5<sup>th</sup> Avenue, New York, NY 10022. Upon information and belief, NBA Media Ventures, LLC is a limited liability company having a principal place of business at 450 Harmon Meadow Blvd., Secaucus, NJ 07094. Upon information and belief, each of the NBA entities has been and is doing business in the State of New York and within this District.

9. Upon information and belief, Major League Baseball Properties, Inc. is a corporation organized and existing under the laws of the State of New York, having a principal place of business at 245 Park Avenue, Floor 34, New York, NY 10167. Upon information and belief, MLB Advanced Media, L.P. is a partnership having a principal place of business at 75 Ninth Avenue, New York, NY 10011. Upon information and belief, each of the MLB entities has been and is doing business in the State of New York and within this District.

10. Upon information and belief, Linens 'n Things, Inc. is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business located at 6 Brighton Road, Clifton, NJ 07015. Upon information and belief, Linens 'n Things has been and is doing business in the State of New York and within this District.

11. Upon information and belief, Tweeter Newco, LLC and Tweeter Opco, LLC are limited liability companies organized and existing under the laws of the State of Delaware, having a principal place of business located at 40 Pequot Way, Canton, MA 02021. Upon information and belief, each of the Tweeter entities has been and is doing business in the State of New York and within this District.

12. Upon information and belief, Buy.com, Inc. is a corporation organized and existing under the laws of the State of Delaware, having a principal place of business located at 85 Enterprise Suite 100, Aliso Viejo, CA 92656. Upon information and belief, Buy.com has been and is doing business in the State of New York and within this District.

13. This action for infringement arises under the patent laws of the United States, including 35 U.S.C. §§ 271, 281 and 283-85, et seq.

14. This Court has jurisdiction over the subject matter of this action on at least the following grounds:

- a. 28 U.S.C. § 1331, this being a civil action arising under the laws of the United States;
- b. 28 U.S.C. § 1337(a), this being a civil action arising under an Act of Congress regulating commerce and protecting trade and commerce; and
- c. 28 U.S.C. § 1338(a), this being a civil action arising under an Act of Congress relating to patent rights.

15. This Court has personal jurisdiction over Defendants because, *inter alia*, upon information and belief, Defendants have conducted, and at the time of the filing of this Complaint are conducting, business in this State and District and otherwise have committed acts in this State and in this District that are the subjects of and/or related to the claims set forth herein.

16. Venue is properly laid in this Court under the provisions of 28 U.S.C. §§ 1391 and 1400(b).

#### **CLAIMS FOR PATENT INFRINGEMENT**

17. On August 21, 2001, United States Patent No. 6,278,455 ("the '455 patent") was duly and legally issued for a "Pictorial Interface For Accessing Information In An Electronic File System." A true and correct copy of the '455 patent is attached hereto as Exhibit "A" and made a part hereof.

18. Picture Patents, LLC is the owner, by assignment, of all right, title, and interest in the '455 patent. Picture Patents has the right to bring and maintain the present action.

19. Upon information and belief, Aeropostale manufactures, makes, has made, uses, sells and/or offers for sale devices and/or services that infringe claims in the '455 patent. Aeropostale is infringing directly, by inducement, and/or by contributing to the infringement of

the '455 patent by offering, providing, using and operating services through one or more websites, including but not limited to the "www.aeropostale.com" website, including but not limited to providing a pictorial interface on said websites that permits access of electronic files. Aeropostale has committed these acts of infringement throughout the United States, including in this judicial district.

20. Upon information and belief, Aeropostale has committed acts of willful infringement as it had notice of the '455 patent and notice that it was infringing the '455 patent at least as early as when it was served with the original complaint alleging infringement, and to date, Aeropostale has not removed the infringing material from its website, and it continues to infringe the '455 patent.

21. Plaintiff has been damaged as a result of Aeropostale's infringing conduct.

22. Upon information and belief, Dick's Sporting Goods manufactures, makes, has made, uses, sells and/or offers for sale devices and/or services that infringe claims in the '455 patent. Dick's Sporting Goods is infringing directly, by inducement, and/or by contributing to the infringement of the '455 patent by offering, providing, using and operating services through one or more websites, including but not limited to the "www.dickssportinggoods.com" website, including but not limited to providing a pictorial interface on said websites that permits access of electronic files. Dick's Sporting Goods has committed these acts of infringement throughout the United States, including in this judicial district.

23. Plaintiff has been damaged as a result of Dick's Sporting Goods' infringing conduct.

24. Upon information and belief, Charlotte Russe manufactures, makes, has made, uses, sells and/or offers for sale devices and/or services that infringe claims in the '455 patent.

Charlotte Russe is infringing directly, by inducement, and/or by contributing to the infringement of the '455 patent by offering, providing, using and operating services through one or more websites, including but not limited to the "www.charlotterusse.com," website, including but not limited to providing a pictorial interface on said websites that permits access of electronic files. Charlotte Russe has committed these acts of infringement throughout the United States, including in this judicial district.

25. Plaintiff has been damaged as a result of Charlotte Russe's infringing conduct.

26. Upon information and belief, GSI Commerce Solutions, Inc. and GSI Commerce, Inc. (collectively "GSI") manufacture, make, have made, use, sell and/or offer for sale devices and/or services that infringe claims in the '455 patent. GSI is infringing directly, by inducement, and/or by contributing to the infringement of the '455 patent by offering, providing, using and operating services through one or more websites, including but not limited to the "www.fogdog.com," and "www.aeropostale.com" websites, including but not limited to providing a pictorial interface on said websites that permits access of electronic files. GSI has committed these acts of infringement throughout the United States, including in this judicial district.

27. Upon information and belief, GSI has been and is inducing the direct infringement of the '455 patent by one or more of the other defendants named herein.

28. Upon information and belief, GSI has committed acts of willful infringement as it had notice of the '455 patent and notice that it was infringing the '455 patent at least as early as when it was given notice by Aeropostale of this action, and to date, GSI has not removed the infringing material from its website or those other websites that it controls or manages, and it continues to infringe the '455 patent.

29. Plaintiff has been damaged as a result of GSI's infringing conduct.

30. Upon information and belief, Fogdog manufactures, makes, has made, uses, sells and/or offers for sale devices and/or services that infringe claims in the '455 patent. Fogdog is infringing directly, by inducement, and/or by contributing to the infringement of the '455 patent by offering, providing, using and operating services through one or more websites, including but not limited to the "www.fogdog.com," website, including but not limited to providing a pictorial interface on said websites that permits access of electronic files. Fogdog has committed these acts of infringement throughout the United States, including in this judicial district.

31. Plaintiff has been damaged as a result of Fogdog's infringing conduct.

32. Upon information and belief, NBA manufactures, makes, has made, uses, sells and/or offers for sale devices and/or services that infringe claims in the '455 patent. NBA is infringing directly, by inducement, and/or by contributing to the infringement of the '455 patent by offering, providing, using and operating services through one or more websites, including but not limited to the "www.nba.com," website, including but not limited to providing a pictorial interface on said websites that permits access of electronic files. NBA has committed these acts of infringement throughout the United States, including in this judicial district.

33. Plaintiff has been damaged as a result of NBA's infringing conduct.

34. Upon information and belief, MLB manufactures, makes, has made, uses, sells and/or offers for sale devices and/or services that infringe claims in the '455 patent. MLB is infringing directly, by inducement, and/or by contributing to the infringement of the '455 patent by offering, providing, using and operating services through one or more websites, including but not limited to the "http://mlb.mlb.com," website, including but not limited to providing a



pictorial interface on said websites that permits access of electronic files. MLB has committed these acts of infringement throughout the United States, including in this judicial district.

35. Plaintiff has been damaged as a result of MLB's infringing conduct.

36. Upon information and belief, Linens 'n Things manufactures, makes, has made, uses, sells and/or offers for sale devices and/or services that infringe claims in the '455 patent. Linens 'n Things is infringing directly, by inducement, and/or by contributing to the infringement of the '455 patent by offering, providing, using and operating services through one or more websites, including but not limited to the "www.lnt.com," website, including but not limited to providing a pictorial interface on said websites that permits access of electronic files. Linens 'n Things has committed these acts of infringement throughout the United States, including in this judicial district.

37. Plaintiff has been damaged as a result of Linens 'n Things' infringing conduct.

38. Upon information and belief, Tweeter manufactures, makes, has made, uses, sells and/or offers for sale devices and/or services that infringe claims in the '455 patent. Tweeter is infringing directly, by inducement, and/or by contributing to the infringement of the '455 patent by offering, providing, using and operating services through one or more websites, including but not limited to the "www.tweeter.com," website, including but not limited to providing a pictorial interface on said websites that permits access of electronic files. Tweeter has committed these acts of infringement throughout the United States, including in this judicial district.

39. Plaintiff has been damaged as a result of Tweeter's infringing conduct.

40. Upon information and belief, Buy.com manufactures, makes, has made, uses, sells and/or offers for sale devices and/or services that infringe claims in the '455 patent. Buy.com is infringing directly, by inducement, and/or by contributing to the infringement of the '455 patent

by offering, providing, using and operating services through one or more websites, including but not limited to the "www.buy.com," website, including but not limited to providing a pictorial interface on said websites that permits access of electronic files. Buy.com has committed these acts of infringement throughout the United States, including in this judicial district.

41. Plaintiff has been damaged as a result of Buy.com's infringing conduct.

42. Plaintiff has been irreparably harmed by the actions of each of the above defendants and has no adequate remedy at law.

#### **JURY DEMAND**

43. Plaintiff hereby requests a trial by jury pursuant to Rule 38 of the Federal Rules of Civil Procedure.

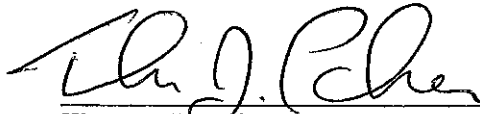
#### **PRAYER**

44. WHEREFORE, Plaintiff respectfully requests that the Court find in its favor and against Defendants and the Court enter a judgment or order granting Plaintiff the following relief:

- a. That one or more claims of United States Patent No. 6,278,455 have been infringed, either literally and/or under the doctrine of equivalents, by Defendants and/or by others to whose infringement has been contributed to by Defendants and/or by others whose infringement has been induced by Defendants;
- b. That Defendants account for and pay to Plaintiff damages caused by Defendants' infringing activities complained of herein;
- c. That Plaintiff be granted pre-judgment and post-judgment interest at the maximum rate allowable by law on the damages caused by reason of Defendants' infringing activities complained of herein;

- d. That Plaintiff be awarded costs and attorneys' fees;
- e. That the infringement of Defendants Aeropostale, Inc., GSI Commerce Solutions, Inc. and GSI Commerce, Inc. be declared willful;
- f. That Plaintiff be granted additional damages up to three times the amount found or assessed as authorized by 28 U.S.C. §284 against Defendants Aeropostale, Inc., GSI Commerce Solutions, Inc. and GSI Commerce, Inc.;
- g. That Defendants be permanently enjoined from any conduct or activity that infringes United States Patent No. 6,278,455; and
- h. That Plaintiff be granted such other and further relief, both legal and equitable, as the Court may deem is just and proper under the circumstances.

Respectfully submitted this 8<sup>th</sup> day of April, 2008.



Thomas J. Parker (Bar No. TP-7219)  
Robert E. Hanlon (Bar No. RH-8794)  
ALSTON & BIRD LLP  
90 Park Avenue  
New York, NY 10016  
(212) 210-9400

ATTORNEYS FOR PLAINTIFF  
Picture Patents, LLC

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PICTURE PATENTS, LLC,

Plaintiff,

v.

Civil Case No. 07cv5567 (JGK) (HBP)

AEROPOSTALE, INC., DICK'S  
SPORTING GOODS, INC., CHARLOTTE  
RUSSE, INC., GSI COMMERCE  
SOLUTIONS, INC., FOGDOG, INC.,  
GSI COMMERCE, INC., NATIONAL  
BASKETBALL ASSOCIATION, NBA  
PROPERTIES, INC., NBA MEDIA  
VENTURES, LLC, MAJOR LEAGUE  
BASEBALL PROPERTIES, INC., MLB  
ADVANCED MEDIA, L.P., LINENS 'N  
THINGS, INC., TWEETER NEWCO, LLC,  
TWEETER OPCO, LLC, BUY.COM, INC.

Defendants.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK )

COUNTY OF NEW YORK )

Srilakshmi M. Ravi, being duly sworn, deposes and says that I am employed in the office of Alston & Bird LLP attorneys for Plaintiff Picture Patents, LLC. and that on April 8, 2008, I served a true copy of the within Third Amended Complaint by mailing a copy of the same in a UPS Overnight envelope addressed as follows:

BUY.COM, INC.

Represented by:

John J. Driscoll  
Thompson & Knight  
919 Third Avenue, 39th floor  
New York, NY 10022-3915  
Phone: (212) 751-3001  
Fax: (212) 751-3113

  
Srilakshmi M. Ravi

Sworn to before me this \_\_\_\_ day of  
April, 2008.

  
\_\_\_\_\_  
Notary Public

YOLANDA SANCHEZ  
Notary Public, State of New York  
No. 01SA6157467  
Qualified in Bronx County  
Commission Expires Dec. 11, 2010

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PICTURE PATENTS, LLC,

Plaintiff,

v.

AEROPOSTALE, INC., DICK'S  
SPORTING GOODS, INC., CHARLOTTE  
RUSSE, INC., GSI COMMERCE  
SOLUTIONS, INC., FOGDOG, INC.,  
GSI COMMERCE, INC., NATIONAL  
BASKETBALL ASSOCIATION, NBA  
PROPERTIES, INC., NBA MEDIA  
VENTURES, LLC, MAJOR LEAGUE  
BASEBALL PROPERTIES, INC., MLB  
ADVANCED MEDIA, L.P., LINENS 'N  
THINGS, INC., TWEETER NEWCO, LLC,  
TWEETER OPCO, LLC, BUY.COM, INC.

Defendants.

Civil Case No. 07cv5567 (JGK) (HBP)

AFFIDAVIT OF SERVICE

STATE OF NEW YORK )

COUNTY OF NEW YORK )

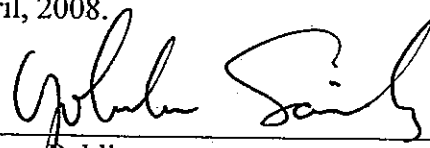
Srilakshmi M. Ravi, being duly sworn, deposes and says that I am employed in the office of Alston & Bird LLP attorneys for Plaintiff Picture Patents, LLC. and that on April 8, 2008, I served a true copy of the within Third Amended Complaint by mailing a copy of the same in a UPS Overnight envelope addressed as follows:

TWEETER NEWCO, LLC  
TWEETER OPCO, LLC

Represented by:  
Suzanne M. Berger  
Bryan Cave LLP  
1290 Avenue of Americas  
New York, New York 10104  
Phone: (212) 541-2034  
Fax: (212) 541-1334

  
Srilakshmi M. Ravi

Sworn to before me this 08 day of  
April, 2008.

  
Notary Public

YOLANDA SANCHEZ  
Notary Public, State of New York  
No. 01SA6157467  
Qualified in Bronx County  
Commission Expires Dec. 11, 2010

IN THE UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

PICTURE PATENTS, LLC,

Plaintiff,

v.

Civil Case No. 07cv5567 (JGK) (HBP)

AEROPOSTALE, INC., DICK'S  
SPORTING GOODS, INC., CHARLOTTE  
RUSSE, INC., GSI COMMERCE  
SOLUTIONS, INC., FOGDOG, INC.,  
GSI COMMERCE, INC., NATIONAL  
BASKETBALL ASSOCIATION, NBA  
PROPERTIES, INC., NBA MEDIA  
VENTURES, LLC, MAJOR LEAGUE  
BASEBALL PROPERTIES, INC., MLB  
ADVANCED MEDIA, L.P., LINENS 'N  
THINGS, INC., TWEETER NEWCO, LLC,  
TWEETER OPCO, LLC, BUY.COM, INC.

Defendants.

AFFIDAVIT OF SERVICE

STATE OF NEW YORK )

COUNTY OF NEW YORK )

Srilakshmi M. Ravi, being duly sworn, deposes and says that I am employed in the office of Alston & Bird LLP attorneys for Plaintiff Picture Patents, LLC. and that on April 8, 2008, I served a true copy of the within Third Amended Complaint by mailing a copy of the same in a UPS Overnight envelope addressed as follows:

AEROPOSTALE, INC.  
DICK'S SPORTING GOODS, INC.  
CHARLOTTE RUSSE, INC.  
GSI COMMERCE SOLUTIONS, INC.  
FOGDOG, INC.  
GSI COMMERCE, INC.  
NATIONAL BASKETBALL ASSOCIATION  
NBA PROPERTIES, INC.  
NBA MEDIA VENTURES, LLC



MAJOR LEAGUE BASEBALL PROPERTIES, INC.  
MLB ADVANCED MEDIA, L.P.  
LINENS 'N THINGS, INC.

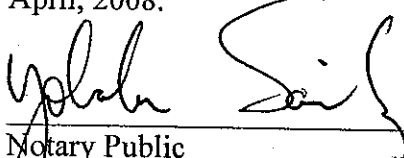
Represented by

Janet Cullum  
Nathan Cummings  
Cooley, Godward, Kronish, LLP  
1114 Avenue of the Americas  
New York, NY 10036-7798  
(212) 479-6000  
Fax: (212) 479-6275

Sandhya K Kidd  
Morgan, Lewis & Bockius LLP (New York)  
101 Park Avenue  
37th Floor  
New York, NY 10178  
(212) 309-6000  
Fax: (212) 309-6001  
Email: skidd@morganlewis.com  
*ATTORNEY TO BE NOTICED*

  
Srilakshmi M. Ravi

Sworn to before me this 8 day of  
April, 2008.

  
\_\_\_\_\_  
Notary Public

YOLANDA SANCHEZ  
Notary Public, State of New York  
No. 01SA6157467  
Qualified in Bronx County  
Commission Expires Dec. 11, 2010